

In the Office Action, claims 1, 3, 7, 12, 13, 18, 20, 23, 24, and 30-32 were rejected under 35 U.S.C. § 102(b) based on Baudin (U.S. Patent No. 6,068,396¹); and claims 1-5, 7, 8, 10-13, 15-17, 21, 25-40, 42, 43, 45-49, and 53-66 were rejected under 35 U.S.C. § 103(a) based on Spielman (U.S. Patent No. 3,941,270) in combination with Goncalves (U.S. Patent No. 5,209,565). Claims 1, 36, and 64-66 are the only independent claims rejected under either § 102(b) or § 103(a), and Applicant respectfully traverses each of the rejections of those claims.

Independent Claim 1

In the Office Action, Applicant's independent claim 1 was rejected under 35 U.S.C. § 102(b) based on Baudin and under § 103(a) based on Spielman in combination with Goncalves. Applicant respectfully traverses each of those rejections because (1) with respect to the § 102(b) rejection based on Baudin, that reference does not explicitly or inherently disclose all of the subject matter recited in claim 1; and (2) with respect to the § 103(a) rejection based on Spielman in combination with Goncalves, the Office Action fails to establish a *prima facie* case of obviousness because there is no suggestion or motivation to make the rejection statement's proposed, hypothetical modification to the Spielman disclosure, and even if there was, the Spielman and Goncalves references fail to disclose or suggest all of the subject matter recited in independent claim 1. Therefore, Applicant respectfully submits that

¹ Applicant respectfully notes that the rejection statement apparently mis-identifies the Baudin reference as U.S. Patent No. 6,038,396 rather than U.S. Patent No. 6,068,396.

independent claim 1 is patentably distinguishable from the Baudin, Spielman, and Goncalves references, taken singly or in any combination.

Concerning the § 102(b) rejection of claim 1 based on the Baudin reference, the M.P.E.P. advises that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” § 2131 (citation omitted). Since the Baudin reference fails to either explicitly or inherently disclose all of the subject matter recited in Applicant’s independent claim 1, that claim should be patentably distinguishable from Baudin.

Applicant’s independent claim 1 recites a system including, among other things, a “safety member . . . configured to press against [a] seal while the seal maintains closure of [a] second opening” The Baudin reference fails to disclose or suggest at least that subject matter recited in claim 1.

The rejection statement interprets the Baudin reference as disclosing “a first container 27 and a second container 2, 14,” and asserts that “[t]he first container includes a neck at 32, an opening defined by the neck at free edge 31, a coupling member 32 and a safety member defined by projection 36.” Office Action at 2. The rejection statement further asserts that “[t]he second container includes an opening defined by skirt 18, a coupling member 25, and a seal member at 20,21,37.” Id. In addition, the rejection statement asserts that “[t]he projection/protrusion 36 extend up to a level on line with the free edge of the container,” and that “[t]herefore, the projection/protrusion 36 may be said to extend through the opening of the first container 27.” Id. The rejection statement also asserts that “[t]he safety member 36 may be considered to be blunt ended since it does not end at a single edge,” and that

“at some position in the partially telescoping of the coupling members, the projection will press against the element 37 of the seal, but there will be insufficient force therebetween to opening the seal.” Id. at 2-3.

Notwithstanding the rejection statement’s interpretation, the Baudin reference itself discloses a device for the extemporaneous mixing of two products. The device includes an upper container 2 for containing a first product having a first end 38, which is surmounted by a neck 3 having an external surface with a thread 4 capable of cooperating with a corresponding thread 5 of a dispensing nozzle 6. The container 2 further includes a bottom end 10 having an opening forming a collar 11 with an external thread 12 capable of cooperating with a corresponding thread 13 provided on an upper end 15 of an internal surface of an intermediate element 14. The intermediate element 14 includes a skirt 18 having a free edge 19, which defines an opening 20. The opening 20 may be obturated by a stopper 21. The intermediate element 14 includes a skirt 24 having an internal surface with a thread 25 capable of cooperating with a thread 26 carried by an external surface of an upper end of a container 27 for containing a second product. The container 27 may include a catch engagement bead, which may ensure that after the container 27 has been threaded onto the intermediate element 14, the container 27 cannot be removed from the intermediate element 14. The container 27 defines an opening delimited by a free end 31 and further includes an element forming a projection 36 capable of engaging a free end of a stem 37 carried by a bottom surface of the stopper 21, such that the engagement causes the stopper 21 to be ejected, so that mixing of two products can occur. The stem 37 has an axial height slightly smaller than the axial height of the intermediate element 14, so that the

assembly, including the upper container and the intermediate element, can be placed upright on a flat surface without the risk of accidental ejection of the stopper 21. The container 27 may include a lid 33 for closing the container 27.

When using the Baudin device, the user removes the lid 33 from the container 27 and threads the opening 30 of the container 27 onto the intermediate element 14. As the container 27 is threaded onto the intermediate element 14, the projecting element 36 abuts against a free end of the stem 37 and subsequently ejects the stopper 21. The first product contained in the upper container 2 drops via gravity into the space defined by the intermediate element 14, such that the second product contained in the container 27 and first product contained in the upper container 2 can be mixed, for example, via shaking, and dispensed through the nozzle 6.

In short, the Baudin reference does not explicitly or inherently disclose a “safety member . . . configured to press against [a] seal while the seal maintains closure of [a] second opening,” as recited in independent claim 1. The rejection statement asserts that the Baudin reference discloses a “safety member defined by projection 36 . . . , and a seal member 20,21,37,” and that “at some position in the partially telescoping of the coupling members, the projection [36] will press against the element 37 of the seal” Office Action at 2-3. Applicant respectfully disagrees with the rejection statement’s apparent assertion that Baudin discloses a safety member configured to press a seal by virtue of Baudin’s projecting element 36 abutting against stem 37, at least because Baudin’s projecting element 36 presses against stem 37, which is not a seal, rather than stopper 21. Therefore, Baudin does not disclose, either explicitly or inherently, all of the

subject matter recited in independent claim 1, and therefore, under the guidance of the M.P.E.P., that claim should be patentably distinguishable from the Baudin reference.

Turning to the 35 U.S.C. § 103(a) rejection of claim 1 based on Spielman in combination with Goncalves, the M.P.E.P. advises that in order to establish a *prima facie* case of obviousness, among other criteria, "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference . . . [and that t]he teaching or suggestion to make the claimed combination . . . must . . . be found in the prior art, and not based on applicant's disclosure." § 2142 (citation omitted). Even if there is any suggestion or motivation, the M.P.E.P. further advises that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." Id.

Applicant respectfully submits that rejection statement's hypothetical, proposed combination of the Spielman and Goncalves references is improper at least because there is no suggestion or motivation to combine the references' teachings in the rejection statement's proposed, hypothetical manner, and that even if there was, those references fail to disclose or suggest all of the subject matter recited in independent claim 1.

The rejection statement interprets the Spielman reference as disclosing "a second container at 46 for containing a product," and asserts that "[t]he second container includes a second opening at 12, a seal at 32,38,40,42, a neck/coupler at 11, a removable stopper at screw closure 20." Office Action at 3. The rejection statement further "contends that the shoulder of the coupler 11 of the first container 46 will become

coupled to the threaded tubular element, as shown in Figure 3, since the term 'coupling' is broad enough to not require any interlock." Id. at 4.

The rejection statement acknowledges that the Spielman reference "does not disclose the reservoir/first container (col. 1, line 31 or 32) as being structurally connected in some manner with the structure defining the first opening . . . and with protrusion 48," but nevertheless concludes that "[i]t would have been obvious in view of Gonclaves [sic] to have made the first opening . . . of Spielman and the protrusion 48 of Spielman structurally connected with the reservoir of column 1, line 31 or 32 (Spielman) to allow dispensing of the product of the second container from the second container into the first container without the product being able to escape the combination of the containers." Id. at 5. The rejection statement also concludes that "[i]t would have further been obvious in view of Gonclaves [sic] to have provided a first product in the reservoir disclosed by Spielman (as modified above) to be mixed or combined with the product (second product) of the second container 46 when the product in the second container is transferred to the first container." Id.

Applicant does not fully understand the Examiner's interpretation and conclusions, but respectfully submits that the Spielman reference itself discloses a seal for liquid materials of the type, which are broken by any suitable "puncturing device." In particular, the Spielman reference discloses a removable seal 10, including a cylindrical member 11 having a first open end 12 and a second open end 14, an internal hollow portion 16, and an external male thread 18 proximate the first open end 12. The removable seal 10 further includes a screw closure 20 having a top wall 22 and a continuous side wall 24, which is attached to and extends from top wall 22. The side

wall 24 is provided internally with a female thread 26 for engagement with male thread 18 of cylindrical member 11. Top wall 22 is provided with a perforate portion 28 permitting communication through top wall 22 to a flexible liquid impervious sealing member 30 or 30a.

During use of the Spielman seal, the sealing member 30 or 30a may be removed from first open end 12 by applying pressure on sealing member 30 or 30a through the perforate portion 28 of the top wall 22. When such pressure is applied, sealing member 30 or 30a disengages from the first end 12 of the cylindrical member 11, thus permitting communication through the perforate portion 28 of top wall 22 to the hollow portion 16 of the cylindrical member 11. The pressure is applied through the perforate portion 28 of the top wall 22 by a hollow spike 48, which is provided with openings 50 to permit entry of liquid from the hollow portion 16 into the hollow spike 48 for carrying a liquid through the hollow spike 48. The Spielman reference, however, does not disclose a system for mixing at least two products, as recited in independent claim 1.

The Goncalves reference discloses an assembly that includes a tube 2 and a wide-necked pot 3 respectively forming first and second containers. The tube 2 has a cylindrical neck 6, and a tearable cap 7 is disposed on the edge of the neck 6 that can either be formed as one piece with the tube 2 or connected thereto. The exterior wall of the neck 6 is provided with an outer thread 8, and a stopper 9 may be fixed to the tube 2 by a thread 10 that is complimentary to the thread 8 of the tube 2. The pot 3 includes a flat circular base 11 and a capsule 15. The capsule 15 includes an opening 18 bordered by a perforating device that includes a collar 19 having a beveled cutting edge. A first skirt 20 is spaced from the collar 19 and includes an inner thread 21 that is

complimentary to the outer thread 8 of the neck 6 of the tube 2. A second skirt 28 surrounds the first skirt 21 and includes an outer thread 29. The Goncalves assembly further includes a cover 16 having a cylindrical skirt 26 having an inner thread 27 that is complimentary to the outer thread 29 of the second skirt 28 of the pot 3. The user removes the stopper 9 from the tube 2 and the cover 16 from the pot 3. The neck 6 of the tube 2 is threaded into the skirt 20 and the collar 19 tears the cap 7 of the tube 2. Thereafter, the product in tube 2 may be passed into the pot 3.

Applicant respectfully submits that the rejection statement's apparent attempt to modify the Spielman disclosure relating to removable seals, so as to be in a hypothetical form of a system for mixing at least two products lacks any legally proper motivation or suggestion. In particular, there is no suggestion or motivation to make such a hypothetical modification to the Spielman reference at least because someone skilled in Spielman's art relating to removable seals would not have looked to Goncalves' disclosure relating to mixing two different products stored separately to solve some unidentified problem in the removable seal art.

Even if there was any suggestion or motivation to make such a hypothetical modification, the Spielman reference still fails to disclose "a second coupler configured to engage with [a] first coupler," notwithstanding the rejection statement's apparent assertion to the contrary. The rejection statement's assertion that "the shoulder of the coupler 11 of the first container 46 will become coupled to the threaded tubular element, as shown in Figure 3, since the term 'coupling' is broad enough to not require any interlock" is an unreasonably broad interpretation of the Spielman reference and/or the term "coupler." Furthermore, the rejection statement provides no support for its

assertion that “the term ‘coupling’ is broad enough to not require any interlock.”

Therefore, Applicant respectfully submits that the Spielman reference does not disclose or suggest at least that subject matter recited in independent claim 1. In addition to neither disclosing nor suggesting that subject matter, there is no reason to modify the Spielman disclosure to include first and second couplers, since the Spielman reference relates to a seal rather than a device for mixing two products stored separately.

For at least these reasons, the Office Action fails to establish a *prima facie* case of obviousness with respect to Applicant's independent claim 1. Therefore, independent claim 1 should be patentably distinguishable from the Spielman and Goncalves references, taken singly or in combination.

Independent Claim 36

Applicant's independent claim 36 was rejected under 35 U.S.C. § 103(a) based on the Office Action's proposed, hypothetical combination of the Spielman and Goncalves references. For at least the same reasons outlined above with respect to independent claim 1, the Office Action fails to establish a *prima facie* case of obviousness based on the Spielman and Goncalves references. Therefore, independent claim 36 should be patentably distinguishable from those references for at least those reasons.

Independent Claim 64

Applicant's independent claim 64 was rejected under 35 U.S.C. § 103(a) based on the Office Action's proposed, hypothetical combination of the Spielman and

Goncalves references. For at least the same reasons outlined above with respect to independent claim 1, the Office Action fails to establish a *prima facie* case of obviousness based on the Spielman and Goncalves references. Therefore, independent claim 64 should be patentably distinguishable from those references for at least those reasons.

Independent Claim 65

Applicant's independent claim 65 was rejected under 35 U.S.C. § 103(a) based on the Office Action's proposed, hypothetical combination of the Spielman and Goncalves references. For at least the same reasons outlined above with respect to independent claim 1, the Office Action fails to establish a *prima facie* case of obviousness based on the Spielman and Goncalves references. Therefore, independent claim 65 should be patentably distinguishable from those references for at least those reasons.

Independent Claim 66

Applicant's independent claim 66 was rejected under 35 U.S.C. § 103(a) based on the Office Action's proposed, hypothetical combination of the Spielman and Goncalves references. For at least the same reasons outlined above with respect to independent claim 1, the Office Action fails to establish a *prima facie* case of obviousness based on the Spielman and Goncalves references. Therefore, independent claim 66 should be patentably distinguishable from those references for at least the same reasons.

Conclusions

For at least the reasons set forth above, independent claims 1, 36, and 64-66 should be allowable. Dependent claims 2-35 and 37-63 depend from independent claims 1 and 36, respectively. Consequently, those dependent claims should be allowable for at least the same reasons claims 1 and 36 are allowable.

Therefore, Applicant respectfully requests the reconsideration of this application, the withdrawal of the outstanding claim rejections, and the allowance of claims 1-66.

If the Examiner believes that a telephone conversation might advance prosecution, the Examiner is cordially invited to call Applicant's undersigned attorney at 571-203-2739.

Applicant respectfully submits that the Office Action contains numerous assertions concerning to the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicant declines to automatically subscribe to those assertions.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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